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Zydus Wellness Ltd v Pendaftar Cap Dagangan

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HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO WA-24IP-28–07 OF 2024
ADLIN ABDUL MAJID J
20 DECEMBER 2024

C

Trademarks — Application for registration — Opposition — Whether appellant's applications for registration of its 'SUGAR FREE' trademark were rightly refused by Registrar of Trade Marks as appellant's mark failed to meet any of the criteria for registration under s 10 of Trade Marks Act 1976

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The appellant filed two originating summonses ('OS') to set aside the respondent's decision to dismiss its two applications to register its 'SUGAR FREE' trademark for Class 5 and Class 29 goods. The applications and the respondent's decision were made under the Trade Marks Act 1976 ('the TMA'). The applications were rejected because the appellant's mark failed to meet any of the criteria for registration under s 10 of the TMA. In particular, the appellant's mark was found to be neither an invented word nor possessing any distinctive characteristics and directly described the character and quality of the goods for which the mark was intended to be registered.

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Held, dismissing the two OS:

(1) The words 'SUGAR FREE' in the appellant's mark were not invented words but a combination of two English words which essentially meant 'without sugar' or 'not containing any sugar' (see para 14).

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(2) The argument that the words 'SUGAR FREE' was a covert and skillful allusion to the character and quality of the appellant's goods was fundamentally flawed. Rather, the words directly described the character and quality of the appellant's goods, which was that they did not contain any sugar. The understanding conveyed to the public and consumers was that the appellant's goods were free of sugar and were intended for those seeking sugar substitutes or health supplements that did not contain sugar (see paras 19–23).

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(3) The appellant's mark was neither inherently nor factually distinctive. It was not inherently distinctive as the use of the mark would not distinguish goods which the appellant was or might be connected to in the course of trade from goods to which no such connection existed. The mark was not uniquely associated with the appellant nor a unique way of describing the appellant's goods (see para 31).

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(4) In determining that the appellant's mark was not inherently distinctive, the court considered whether other traders needed to use the same mark to describe similar goods, and in doing so, whether such traders would be likely to have improper motives. The descriptive nature of the appellant's mark (suggesting that the appellant's goods were sugar-free) meant that other traders might have a legitimate interest in using the words 'SUGAR FREE' for similar goods, as they directly conveyed the intended use or benefit of the goods to the consumer (see para 32).

(5) The appellant's mark was not factually distinctive as it was not shown to have been used extensively such that it had acquired a secondary meaning that was uniquely associated with the appellant's goods. 'SUGAR FREE' was a broadly descriptive term which was likely to be used by other traders in the industry to describe similar products. It was not shown that 'SUGAR FREE' had acquired a secondary meaning to be factually distinctive (see paras 34, 36 & 38).

(6) The respondent had not erred in law in dismissing the appellant's applications for registration of its trademark (see para 40).

[Bahasa Malaysia summary

Perayu telah memfailkan dua saman pemula ('SP') untuk mengenepikan keputusan responden yang menolak dua permohonannya untuk mendaftarkan tanda dagangan 'SUGAR FREE' ('BEBAS GULA') untuk barangan Kelas 5 dan Kelas 29. Permohonan dan keputusan responden dibuat di bawah Akta Cap Dagangan 1976 ('ACD'). Permohonan tersebut ditolak kerana cap dagangan perayu gagal memenuhi kriteria pendaftaran di bawah s 10 ACD. Cap perayu didapati bukanlah perkataan yang dicipta atau mempunyai ciri-ciri tersendiri dan secara langsung menggambarkan watak dan kualiti barang yang mana cap itu dimaksudkan untuk didaftarkan.

Diputuskan, menolak dua SP tersebut:

(1) Perkataan 'SUGAR FREE' dalam cap dagangan perayu bukanlah perkataan yang dicipta tetapi gabungan dua perkataan Inggeris yang pada dasarnya bermaksud 'tanpa gula' atau 'tidak mengandungi sebarang gula' (lihat perenggan 14).

(2) Hujah bahawa perkataan 'SUGAR FREE' adalah kiasan tersembunyi dan secara tidak langsung merujuk kepada watak ('covert and skillful allusion to the character') dan kualiti barangan perayu tidak boleh dipertahankan. Malah, perkataan tersebut secara langsung menggambarkan watak dan kualiti barangan perayu, iaitu ianya tidak mengandungi sebarang gula. Pemahaman orang ramai dan pengguna adalah bahawa barangan perayu adalah bebas daripada gula dan ditujukan untuk mereka yang mencari pengganti gula atau makanan

tambahan kesihatan yang tidak mengandungi gula (lihat perenggan 19–23). A

(3) Cap perayu secara faktanya tidak menunjukkan ciri-ciri penting atau mempunyai perbezaan. Ianya tidak mempunyai perbezaan kerana penggunaan cap itu tidak akan membezakan barangan perayu yang mungkin berkaitan dalam urusan perdagangan yang mana perkaitan tersebut juga tidak wujud. Cap itu tidak dikaitkan secara unik dengan perayu atau secara unik menggambarkan barangan perayu (lihat perenggan 31). B

(4) Dalam menentukan bahawa cap dagangan perayu tidak mempunyai perbezaan secara kekal, mahkamah mempertimbangkan sama ada peniaga lain perlu menggunakan tanda yang sama untuk menggambarkan barangan yang serupa dan dengan berbuat demikian, peniaga tersebut mungkin mempunyai motif yang tidak wajar. Sifat deskriptif cap perayu (menunjukkan bahawa barangan perayu adalah bebas gula) bermaksud bahawa peniaga lain mungkin mempunyai kepentingan yang sah untuk menggunakan perkataan 'SUGAR FREE' untuk barangan yang serupa kerana mereka secara langsung menunjukkan tujuan penggunaan atau faedah barangan mereka kepada pengguna (lihat perenggan 32). C D E

(5) Cap perayu tidak mempunyai perbezaan secara fakta kerana tidak terbukti digunakan secara meluas sehingga memperoleh makna lain yang dikaitkan secara unik dengan barangan perayu. Perkataan 'SUGAR FREE' adalah istilah deskriptif secara meluas yang mungkin digunakan oleh peniaga lain dalam industri untuk menggambarkan produk yang serupa. Perkataan 'SUGAR FREE' tidak menunjukkan maksud lain untuk menjadikan ianya mempunyai perbezaan secara fakta (lihat perenggan 34, 36 & 38). F

(6) Responden tidak tekhilaf menurut undang-undang ketika menolak permohonan perayu untuk pendaftaran cap dagangannya (lihat perenggan 40).] G

Cases referred to

Bata Ltd v Sim Ah Ba @ Sim Teng Khor & Ors (trading as Kheng Aik Trading) [2006] 6 MLJ 445, CA (refd) H

Eastman Photographic Materials Co Ltd v Comptroller-General of Patents, Designs and Trade Marks (1898) 15 RPC 476, HL (refd)

Fumakilla Ltd v The Registrar of Trademarks [2023] 11 MLJ 691, HC (refd)

Illinois Tool Works, Inc v Pendaftar Cap Dagangan (M) [2009] 9 MLJ 101, HC (refd) I

Keystone Knitting Mills Trade Mark, Re [1928] 45 RPC 421, CA (folld)

Philippart v William Whiteley Ltd, Re Philippart's Trade Mark Diabolo [1908] 2 Ch 274, Ch D (folld)

Service Master (M) Sdn Bhd v MHL Servicemaster Sdn Bhd & Anor and another application [1998] 5 MLJ 378, HC (refd)
Yong Sze Fan & Anor v Sharifah binti Mohd Tamin & Ors [2008] 7 MLJ 803, HC (refd)

Legislation referred to

Trade Marks Act 1976 (repealed by Trademarks Act 2019) s 10, 10(1), (1)(a), (1)(c), (1)(d), (1)(e)
Trademarks Act 2019

Gerald Peter Samuel (Gerald Samuel) for the appellant.
Syaufiq Latif (Intellectual Property Corporation of Malaysia (MyIPO)) for the respondent.

Adlin Abdul Majid J:

INTRODUCTION

[1] The appellant filed two originating summonses by way of WA-24IP-28–07 of 2024 ('OS 28') and WA-24IP-29–07 of 2024 ('OS 29'), seeking to set aside the decisions of the respondent, dismissing the appellant's applications to register its trademark. As the trademark which is the subject matter of OS 28 and OS 29 is the same, both actions were heard together.

[2] After considering documentary evidence before the court and hearing counsel's submissions, the court dismissed the originating summonses. The reasons for the decision are set out below.

BACKGROUND FACTS

[3] On 27 July 2017, the appellant filed the following trademark applications for the mark, 'SUGAR FREE' ('appellant's mark'):

(a) trademark application No 2017007923 under Class 5 for goods being, 'Herbal preparation medicinal drinks, pharmaceutical preparations, effervescent tablets & powders, softgel capsule, health supplements and all included in Class 5'; and

(b) trademark application No 2017007922 under Class 29 for goods being, 'Meat, fish, poultry and game; Meat extracts; Preserved, frozen, dried and cooked fruits and vegetables; Jellies, jams, compotes; Eggs; Milk and milk products; Edible oils and fats; All included in class 29', (collectively, the 'appellant's applications').

[4] On 1 December 2017, the respondent objected to the appellant's applications, and after hearing the appellant's submissions, dismissed the

applications on 8 September 2020. The grounds of the respondent's decisions were issued on 13 May 2024.

[5] The appellant filed OS 28 and OS 29, seeking to set aside the respondent's decisions.

[6] The respondent's decisions are based on the provisions of the Trade Marks Act 1976 ('the TMA 1976'), as the appellant's applications and the respondent's oppositions were filed and heard before the enforcement of the Trademarks Act 2019.

CONSIDERATIONS

Criteria for trademark registration

[7] To qualify for registration, a trademark must meet at least one of the criteria in s 10 of the TMA 1976. The section provides that:

> (1) In order for a trade mark (other than a certification trade mark) to be registrable, it shall contain or consist of at least one of the following particulars:
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> (a) the name of an individual, company or firm represented in a special or particular manner;
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> (b) the signature of the applicant for registration or of some predecessor in his business;
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> (c) an invented word or words;
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> (d) a word having no direct reference to the character or quality of the goods or services not being, according to its ordinary meaning, a geographical name or surname; or
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> (e) any other distinctive mark.

[8] The criteria in s 10(1) are treated as separate and distinct, and it is not necessary for all criteria to be fulfilled for a trademark to be eligible for registration (see *Yong Sze Fan & Anor v Sharifah binti Mohd Tamin & Ors* [2008] 7 MLJ 803, following *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents, Designs and Trade Marks* (1898) 15 RPC 476). A trademark is eligible for registration if at least one criterion is met.

[9] The appellant's mark is not the name of an individual, company or firm, or the signature of an applicant, and as such, s 10(1)(a) and (b) does not apply to the mark. The provisions relevant to the appellant's marks are s 10(1)(c), (d) and (e).

Grounds of the respondent's decisions

[10] From the grounds of the respondent's decisions, the respondent dismissed the appellant's applications, as the respondent found that the appellant's mark did not meet the criteria in s 10(1)(c), (d) and (e) of the TMA 1976, in that:

(a) the appellant's mark is not an invented word;

(b) the appellant's mark has a direct reference to the character and quality of the goods for which it is intended to be registered; and

(c) the appellant's mark does not possess distinctive characteristics.

[11] The court considered the respondent's findings to determine whether any error of law or fact has been committed.

Does the appellant's mark consist of an invented word?

[12] The appellant argued that the appellant's mark — the words 'SUGAR FREE' — are invented words.

[13] However, from the dictionary definitions of the appellant's mark, I find it to be clear that the mark does not consist of invented words. I relied on the following definitions of the words 'sugar' and 'free' adopted by the respondent:

(a) from the *Merriam-Webster* online dictionary, the word 'sugar' is defined as 'a sweet crystallizable material that consists wholly or essentially of sucrose, is colorless or white when pure tending to brown when less refined, is obtained commercially from sugarcane or sugar beet and less extensively from sorghum, maples, and palms, and is important as a source of dietary carbohydrate and as a sweetener and preservative of other foods'; and

(b) from the *Cambridge* online dictionary, the definition of 'free' includes 'used at the end of words to mean 'without'.

[14] Thus, I find that the words 'SUGAR FREE' are not words that are invented. Rather, they are a combination of two English words, which essentially means without sugar, or not containing any sugar.

[15] The case of *Philippart v William Whiteley Ltd, Re Philippart's Trade Mark Diabolo* [1908] 2 Ch 274, is of guidance on the question of what constitutes an invented word. The court held that:

> To be an invented word, within the meaning of the Act, *a word must not only be newly coined in the sense of not being already current in the English language, but must be such as not to convey any meaning, or at any rate any obvious meaning, to ordinary Englishmen.* It must be a word having no meaning, or no obvious meaning, until one has been assigned to it. I use the expression 'obvious meaning' and refer to

'ordinary Englishmen' because, to prevent a newly-coined word from being an invented word, it is not enough that it might suggest some meaning to a few scholars. Further, while on the one hand the fact that a word may be found in the vocabulary of a foreign language does not, in itself, preclude it from being an invented word, so, on the other hand, a foreign word is not an invented word merely because it is not current in the English tongue. (Emphasis added.)

[16] The above passage has been relied on by the Malaysian courts in *Bata Ltd v Sim Ah Ba @ Sim Teng Khor & Ors (trading as Kheng Aik Trading)* [2006] 6 MLJ 445 and *Fumakilla Ltd v The Registrar of Trademarks* [2023] 11 MLJ 691.

[17] In *Illinois Tool Works, Inc v Pendaftar Cap Dagangan (M)* [2009] 9 MLJ 101, the court considered the registrability of the 'HIGH TEMP RED' trademark, and found as follows:

[34] The court in the case of *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents, Designs and Trade Marks* (1898) 15 RPC 476 stated that a combination of two English words is not an invented word not because they are simply English words but rather because *it should not 'deprives the rest of the community of the right to employ that word for purposes of describing the character or quality of the goods'*. The House of Lords in that case went on to say that *an invented word 'can have a meaning'.* In that case, the court also held:

> At the same time, I am not prepared to go so far as to say that a combination of words ... so little known in this country, that it would suggest no meaning except to a few scholars, might not be regarded as an invented word. It is in this respect that I desire to qualify my assent to ... proposition that an invented word can never have a meaning.

[35] *What this means is that an invented word can have a meaning as long as the meaning is not obvious and does not deprive members of the trade from using it to describe the character or quality of the goods.*

[36] The true proposition in the *Eastman Photographic*'s case is further explained as follows:

> ... it seems to me that it is no objection ... *that it may contain a covert and skilful allusion to the character or quality of the goods — I do not think that it is necessary that it should be wholly meaningless.*
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> ... two meanings packed up into one word. No one would say that they were not invented words. Still, they contain a meaning — a meaning is wrapped up in them if you can only find it out ... There is little danger of the apprehended mischief if invention is required as a condition of registration. After all, invention is not so very common.

[37] Therefore, an application may be allowed under the law to have some meaning in its mark and that meaning is acceptable if it is a covert and skilful allusion to the character or quality of the goods. *What this means is that the meaning of the mark is not so obvious to the character or quality of the goods. If the trademark has an indirect*

meaning (covert and skilful allusion) it is permissible. (Emphasis added.)

[18] The court then found 'HIGH TEMP RED' to be a covert and skilful allusion to the appellant's goods, and allowed the registration of the trademark.

[19] In the present case, the appellant urged that the same approach be adopted for the words 'SUGAR FREE', arguing that the term is a covert and skilful allusion to the character and quality of its goods.

[20] I am of the view that this argument is fundamentally flawed. I find the words 'SUGAR FREE' do not covertly or skilfully allude to the appellant's good. Rather, they are a direct reference to the characteristics of the appellant's goods, which is that the goods do not contain any sugar. The understanding that would be conveyed to the public and consumers is that the appellant's goods are free of sugar and are intended for those seeking sugar substitutes or health supplements without sugar content.

[21] In this regard, the court finds that the term 'SUGAR FREE' is not an invented word, but are words that communicate and directly describe an obvious and common feature of the appellant's goods, namely that it is free of sugar.

Does the appellant's mark directly refer to the character and quality of the appellant's goods?

[22] What follows from the court's finding on the first issue — that the appellant's mark does not contain invented words but merely describes the appellant's goods — is the answer to the second issue, namely whether the appellant's mark has a direct reference to the character and quality of the appellant's goods.

[23] This question must necessarily be answered in the affirmative, as the public and consumers seeing the appellant's mark would immediately and directly understand the quality and nature of the appellant's goods — that they are free of sugar.

[24] The appellant argued that as its goods are pharmaceutical and veterinary goods, the term 'SUGAR FREE' would not apply to such goods, as no one in the pharmaceutical and veterinary industries has used or would want to use the term 'SUGAR FREE' on their goods. Further, 'SUGAR FREE' would not directly or indirectly describe the character or quality of pharmaceutical or veterinary products.

[25] In *Re Keystone Knitting Mills Trade Mark* [1928] 45 RPC 421 is of guidance on this issue. In finding that the word 'Charm' describes the goods which in this case are 'hosiery being wearing apparel', the court held as follows:

> I think one has to look at the word which is registered, not in its strict grammatical significance, but *as it would represent itself to the public at large who are to look at it and to form an opinion as to what it connotes.* (Emphasis added.)

[26] In the present case, the appellant's mark connotes that its products are free of sugar, and in my view, it is not implausible for the words 'SUGAR FREE' to describe pharmaceutical and veterinary products in the same manner as they would describe food products.

[27] As such, I find that the appellant's mark directly refers to the character and quality of the appellant's goods.

Is the appellant's mark distinctive?

[28] Section 10 of the TMA 1976 provides that:

> (2) A name, signature or word which is not described in paragraph (1)(a), (b), (c) or (d) is not registrable unless it is by evidence shown to be *distinctive*.
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> (2A) For the purposes of this section, 'distinctive', in relation to the trade mark registered or proposed to be registered in respect of goods or services, means the trade mark *must be capable of distinguishing goods or services with which the proprietor of the trade mark is or may be connected in the course of trade from goods or services in the case of which no such connection subsists*, either generally or, where the trade mark is registered or proposed to be registered, subject to conditions, amendments, modifications or limitations, in relation to use within the extent of the registration.
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> (2B) In determining whether a trade mark is capable of distinguishing as aforesaid, regard may be had to the extent to which —
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> (a) the trade mark *is inherently capable of distinguishing* as aforesaid; and
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> (b) by reason of the use of the trade mark or of any other circumstances, the trade mark *is in fact capable of distinguishing* as aforesaid. (Emphasis added.)

[29] From the above provision, for the appellant's mark to meet the test of distinctiveness, it must be capable of distinguishing the appellant's goods with other goods. The mark could either be inherently distinctive or factually distinctive.

[30] The issue of distinctiveness was examined in *Yong Sze Fan* where the court found as follows:

> [27] In deciding inherent distinctiveness, the case of *W & G Du Cros Ltd's Application* (1913) 30 RPC 660 can be relied upon. It was held by Lord Parker at

A p 671 as follows:

> The applicant for registration in effect says 'I intend to use this mark as a trademark ie, for the purpose of *distinguishing my goods from the goods of other persons*', and the Registrar or the court has to determine, before the mark is admitted to registration, whether it is such a kind that the applicant, quite apart from the effects of registration, is likely to attain the object he has in view. The applicant's chance of success in this respect, must, I think largely depend upon *whether other traders are likely, in the ordinary course of their business and without improper motive, to desire to use the same mark, or some mark closely resembling it, upon or in connection with their own goods.*
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> [28] Flowing from this argument, it is clear that *since TAMIN is not the normal or usual way of describing the goods of interest, other traders without improper motive need not use the mark to describe similar goods.* Emphasis is added to the word improper motive as the use by the applicants in this case cannot count as their use is not as a descriptor but to gain some unlawful advantage to the detriment of the respondents. (Emphasis added.)

[31] In the present case, the court finds that the appellant's mark does not meet the test of inherent distinctiveness, as its use would not distinguish goods which the appellant is or may be connected to in the course of trade, from goods in which no such connection exists. The appellant's mark is also not uniquely associated with the appellant; nor is it a unique way of describing the appellant's goods.

[32] In assessing whether the appellant's mark is inherently distinctive, the court considered whether there is a need for other traders to use the same mark to describe similar goods, and in so doing, whether such traders would be likely to have improper motives. My finding is that the descriptive nature of the appellant's mark — which suggests that the appellant's goods do not contain sugar — means that other traders may have a legitimate interest in using the words 'SUGAR FREE' for similar goods, as they directly convey the intended use or benefit of the goods to consumers. As such, the appellant's mark is not inherently distinctive.

[33] In assessing factual distinctiveness, I considered para [29] of the judgment in *Yong Sze Fan*, where the court found that the extensive use of the mark by the respondents means that the mark is factually distinctive, as well as being inherently distinctive.

[34] In the present case, to prove factual distinctiveness, the appellant will need to show that the appellant's mark had been used extensively.

[35] In *Service Master (M) Sdn Bhd v MHL Servicemaster Sdn Bhd & Anor and another application* [1998] 5 MLJ 378, the court explained the concept of

the secondary meaning of a name, in para 391I of the judgment:

> Where a trader chooses a name which describes his product or business, *a secondary meaning must be shown*. For this to happen, the evidence must be far more substantial in that the plaintiff *must show several years of use and business which results in the public associating the name with the plaintiff. The reason for this is that the law does not allow for a monopoly in descriptive terms.* Lord Herschell in *Reddaway v Banham* [1896] AC 199 at pp 212–213 said:
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> > ... I think the fallacy lies in overlooking the fact that a word may acquire in a trade a secondary signification differing from its primary one, and that if it is used to persons in the trade who will understand it, and be known and intended to understand it in its secondary sense, it will none the less be a falsehood that in its primary sense it may be true. A man who uses language which will convey to persons reading or hearing it a particular idea which is false, and who knows and intends this to be the case, is surely not to be absolved from a charge of falsehood because in another sense which will not be conveyed and is not intended to be conveyed it is true. In the present case the jury have found, and in my opinion *there was ample evidence to justify it, that the words 'camel hair' had in the trade acquired a secondary signification in connection with belting, that they did not convey to persons dealing in belting the idea that it was made of camel's hair, but that it was belting manufactured by the plaintiffs.* They have found that the effect of using the words in the manner in which they were used by the defendants would be to lead purchasers to believe that they were obtaining goods manufactured by the plaintiffs, and thus both to deceive them and to injure the plaintiffs.
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> The principle in *Reddaway v Banham was applied in Yomeishu Seizo Co Ltd & Ors v Sinma Medical Products (M) Sdn Bhd* [1996] 2 MLJ 334 where VC George J (as he then was) found that *'even if 'Yan Ming Jiu' in its primary meaning is descriptive of a class of medicinal wines it had come to refer in its secondary meaning to the product of the plaintiffs'.* Further, this principle was also followed in *Reckitt & Colman Products Ltd v Borden Inc & Oths* [1990] 1 All ER 873 where Lord Oliver stated at p 885:
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> > *... even a purely descriptive term consisting of perfectly ordinary English words may, by a course of dealing over many years, become so associated with a particular trader that it acquires a secondary meaning such that it may properly be said to be descriptive of that trader's goods and of his goods alone ...*
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> Lord Jauncey goes on to say at p 896 that:
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> > ... whether such a secondary meaning has been acquired must be a *question of fact.* (Emphasis added.)

[36] Thus, a descriptive mark such as the appellant's mark may be factually distinctive if it can be proven that the mark has a secondary meaning. For a secondary meaning to be established, the appellant must provide extensive evidence of the use of the mark, which had resulted in the public associating the mark with the appellant.

[37] In the present case, the appellant provided the following evidence to demonstrate its use of the appellant's mark:

(a) invoices dated 29 May 2018 and 26 November 2019. However, the court notes that the invoices were issued after the appellant's applications were filed;

(b) photographs of promotional activities carried out by the appellant, for products containing the appellant's mark. However, the time period for which these activities were carried out is not specified; and

(c) promotions and advertisements of products containing the appellant's mark, which are accessible on www.zyduswellness.in and www.sugarfree-india.com. However, the court notes that the websites are targeted to the Indian market and not to Malaysian consumers.

[38] The court finds that the evidence provided is insufficient to demonstrate that the descriptive term 'SUGAR FREE' has become uniquely associated with the goods in the minds of consumers and the public in Malaysia, to acquire a secondary meaning attached to it. The use of 'SUGAR FREE' remains broadly descriptive and is likely to be used by other traders in the industry to describe similar products. The available evidence does not support the conclusion that 'SUGAR FREE' has acquired the necessary secondary meaning to be factually distinctive.

[39] Based on the above, the court finds that the appellant's mark does not meet the test of distinctiveness in s 10 of the TMA 1976.

DECISION

[40] With the findings that:

(a) the appellant's mark consists of an invented word;

(b) the appellant's mark has a direct reference to the character and quality of the appellant's goods; and

(c) the appellant's mark is not distinctive,

the court holds that the respondent did not make any error of law in dismissing the appellant's applications.

[41] The court therefore dismissed OS 28 and OS 29, with costs.

Both OS dismissed.

Reported by Ashok Kumar